

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. 41-DB of 1999

Date of Decision: 24th March, 2008

Baldev Singh and another.

... Appellants

Versus

State of Punjab.

... Respondent

**CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL,
HON'BLE MR. JUSTICE S.D. ANAND.**

Present : Mr. T.S. Sangha, Senior Advocate with
Mr. J.S. Lalli, Advocate,
for the appellants.

Mr. Rajesh Bhardwaj, Deputy Advocate General, Punjab,
for the respondent.

Mr. Pawan Sharma, Advocate,
for the complainant.

S.D. Anand, J.

The appellants, husband and wife inter-se, are in appeal against their conviction by the learned Trial Judge in the following manner:-

Baldev Singh

- (i) Life Imprisonment and fine of Rs.1000/- under Section 302 of the Indian Penal Code;
- (ii) Rigorous imprisonment for ten years and fine of Rs.1000/- under Section 449 read with Section 34 of the Indian Penal Code.

Kulwant Kaur

- (i) Life Imprisonment and fine of Rs.1000/- under Section 302 read with Section 34 of the Indian Penal Code;

- (ii) Rigorous imprisonment for ten years and fine of Rs.1000/- under Section 449 read with Section 34 of the Indian Penal Code.

Appellant – Baldev Singh is real brother of deceased Jora Singh who was initially married to Balbir Kaur (a real sister of PW2 – Sukhpal Kaur) who pre-deceased Jora Singh about a decade ago (prior to the examination at the trial of PW2 – Sukhpal Kaur). A female child namely Amandeep Kaur (PW3) was born out of the union of Balbir Kaur and Jora Singh. After the death of Balbir Kaur, Sukhpal Kaur (PW2) married Jora Singh. Appellant Baldev Singh has two sons namely Malkiat Singh and Kuldeep Singh. Kuldeep Singh is joint in mess and residence with his parents; while Malkiat Singh has strained relations with his parents. The appellants were nourishing a feeling of annoyance with Jora Singh and his family on account of their having maintained visiting terms with Malkiat Singh.

About 7-1/2 months ago (prior to 15.01.1998 when the statement of PW2 – Sukhpal Kaur was recorded), at about 7.15 P.M., PW2 – Sukhpal Kaur and her daughter PW3 – Amandeep Kaur were sitting on the cots in the varandah, in the company of Jora Singh and Inder Singh, who is sister's husband of Sukhpal Kaur. The appellants, who were residing in the house adjacent to that of Jora Singh and Sukhpal Kaur, started abusing them. At that time, appellant Baldev Singh was under the influence of liquor. Jora Singh forbade appellants from abusing him. Thereupon, both the appellants entered the Courtyard of the house of Jora Singh by scaling the intervening wall which was approximately 3 to 4 feet in height. At that very time, appellant Kulwant Kaur handed over a ghope (“an instrument with a pointed edge on the front side fitted in a stick”) to appellant Baldev Singh and also simultaneously exhorted him not to spare Jora Singh. Further, appellant Kulwant Kaur held Jora Singh by

latter's long hair; while appellant Baldev Singh gave a ghope blow on the chest of Jora Singh. On receipt of the blows, Jora Singh fell down upon the ground with his face downward. Both the appellants fled the spot and took away the weapon of offence. The occurrence was witnessed by PW2 – Sukhpal Kaur and PW3 – Amandeep Kaur.

Jora Singh was initially taken to Civil Hospital, Barnala, in a jeep. However, he was declared brought dead by the Medical Officer present over there.

These are the allegations which formed the foundational factual premise of the prosecution version.

In order to prove its plea at the trial, the prosecution examined PW1 – Dr. Tarloki Nath, PW2 – Sukhpal Kaur, PW3 – Amandeep Kaur, PW4 – Constable Teja Singh, PW5 – Dev Raj, Draftsman, PW6 – Constable Malkhan Singh, PW7 – Constable Jagjit Singh, PW8 – HC Nachhatar Pal Singh, PW9 – HC Teja Singh, PW10 – SI Kuldeep Singh and PW11 – HC Avtar Singh.

PW1 Dr. Tarloki Nath had conducted the post mortem on the dead body of Jora Singh and found the following injuries on it.

- “1. Penetrating incised wound 3 x 1 cm size elliptical in shape, was present over the upper part of chest left side. It was 12.5 cm. from left nipple and 4 cm. from left axilla. Blood was oozing out of the wound.
2. Reddish contusion 4.5 x 2 cm size was present over the forehead right side. It was 2 cm. above right eye brow.
3. Reddish brown abrasion 3 x 2 cm size present over the right side of face, one cm. below right eye.
4. Reddish brown abrasion 1 x $\frac{3}{4}$ cm size present at the tip of nose.
5. Lacerated wound 1 cm x 5 cm size present at the middle or

bridge of nose.

On dissection injury No.1 was communicated with the thoracic cavity on left side. The cavity was full of blood. The upper lower of left lung and left ventricle were punctured.”

The Medical Officer further found that the death had occurred due to shock and haemorrhage as a result of injury No.1, which injured the vital organs, heart and lung. All the injuries were found ante mortem in nature and sufficient to cause death in the normal course of nature.

PW2 – Sukhpal Kaur and her daughter PW3 – Amandeep Kaur had witnessed the impugned occurrence.

PW4 – Constable Teja Singh had delivered the special report to the learned Illaqa Magistrate. PW5 – Dev Raj, a qualified draftsman, had prepared scaled site plan of the spot, on the pointing of Mst. Sukhpal Kaur and Amandeep Kaur, wife and daughter respectively of Jora Singh. PW6 – Constable Makhan Singh and PW8 – HC Nachhatar Pal Singh tendered their formal affidavits (Ex.PK and Ex.PM respectively) into evidence. The contents of the affidavits pertain to the intactness of the case property till it was delivered in the office of the Chemical Examiner for analysis thereof. PW11 – HC Avtar Singh, then posted as MHC P.S. Kotwali, Barnala, is a witness of intactness of the case property from the time it was deposited with him on 27.05.1997, till he handed it over to Constable Makhan Singh on 10.06.1997 for being delivered in the office of Chemical Examiner. PW7 – Constable Jagjit Singh made a record-based statement to the effect that a wireless message, copy whereof is Ex.PL, had been received by the police from Kotwali Barnala, intimating the fact that Jora Singh son of Nand Singh had been brought dead to the Civil Hospital, Barnala. PW9 – HC Teja Singh had attested the disclosure statement made by appellant – Baldev Singh on 2.6.1997. He had also attested the recovery memo vide which a ghope Ex.P5 recovered at the

instance of the appellant Baldev Singh was taken into possession by the police. PW10 – SI Kuldeep Singh had investigated the case. Ex.PU and PV, the reports furnished by the Chemical Examiner and the Serologist respectively, were tendered into evidence. (ASI Sarwan Singh was given up as unnecessary; while Inder Singh and Joginder Singh were given up as having been won over by the appellants).

The appellants denied the prosecution allegations and alleged false implication in the case. The common plea taken up by them in the course of the statement under Section 313 Cr.P.C. is quoted hereunder from out of the statement of appellant – Baldev Singh:-

“I am innocent. Sukhpal Kaur and Inder Singh PW had illicit relations with each other. I and my wife Kulwant Kaur and my brother Jora Singh deceased used to object the visit of Inder Singh to the house of Sukhpal Kaur, and Jora Singh due to the illicit relations of Inder Singh with Sukhpal Kaur. On the day of occurrence when Inder Singh came to the house of Jora Singh, Jora Singh objected his visit and there was an altercation between Sukhpal Kaur and Jora Singh. Sukhpal Kaur PW gave a push to Jora Singh as a result of which he fell on a peg on the ground and sustained injury in his chest resulting in his death. I have been falsely involved in this case.”

DW1 – Malkiat Singh and DW2 – Head Constable Jaswant Singh were examined in defence.

The learned Trial Court opted to accept the prosecution version. The plea of innocence preferred by the appellants was declined. The impugned finding of indictment followed at the hands of the learned Trial Judge.

Insofar as appellant – Kulwant Kaur is concerned, we are of the considered opinion that the case against her is not proved beyond

shadow of reasonable doubt. Our observation stems from the fact that though PW2 – Sukhpal Kaur would want the Court to believe that “Some long hair of the deceased were also lifted from the spot”, her statement is contradicted by that of PW3 – Amandeep Kaur, (“I did not see any long hair of my father having fallen at the spot.”) Apart therefrom, it requires pertinent notice that the Investigating Officer did not at all indicate whether any hair of the deceased had been recovered from the spot or not. Both the witnesses aforementioned were, however, common on the point that it was appellant – Kulwant Kaur who had caught hold of the long hair of Jora Singh deceased. The inference proposed thereby is that it was in that process that few hair of Jora Singh are averred to have fallen upon the ground. As no hair were spotted by the police at the spot and further as none had been taken into possession either from over there, it is apparent that Kulwant Kaur had been falsely implicated in the case. She shall stand acquitted accordingly.

However, same is not true of appellant – Baldev Singh, to whom categorical incriminating role was attributed in the deposition on oath of PW2 – Sukhpal Kaur and PW3 – Amandeep Kaur. Before proceeding further, it may be noticed that PW3 – Amandeep Kaur was ascertained by the learned Trial Judge to be a competent child witness. Both of them i.e. Mother and daughter, gave a very graphic description of the manner in which the impugned incident had taken place. They did not mince words while declaring that it was appellant Baldev Singh who, while being under the influence of liquor, gave a ghope blow to Jora Singh, hitting the latter on the chest. That part of the ocular presentation is fully in accord with the medical presentation.

There is adequate evidence on the file to prove motive as well on the part of the appellant in having committed the crime for which he stands convicted. It is common ground that Malkiat Singh, one of the two

sons of the appellant, was separate in mess and in residence from his parents. The affirmative evidence made by PW2 – Sukhpal Kaur and PW3 – Amandeep Kaur that the appellant was annoyed with them as Malkiat Singh used to visit them, is supported by none-else or other than DW1 – Malkiat Singh himself who conceded, in the course of examination, that “I used to visit the house of Zora Singh deceased whenever happened to be on leave.” He also conceded otherwise that he owned a separate house in the village and that he used to reside in that house only whenever he came over on leave.

It is, thus, apparent that there was nothing unnatural in the appellant entertaining a feeling of grievance against the deceased and his family for having continued to be on visiting terms with their son Malkiat Singh who did not have normal relations with his parents. There is equally nothing unnatural in an endeavour, abortive though, made by DW1 – Malkiat Singh to bail out his parents by stating that PW2 – Sukhpal Kaur had illicit relations with her brother-in-law Inder Singh and that there used to be frequent altercations between Sukhpal Kaur and Jora Singh over the continued visits of Inder Singh to their household, that he and his father, and also Inder Singh, had good relations with the deceased and that “I came to know that my aunt Sukhpal Kaur had thrown Zora Singh on a Peg.”

The learned counsel for the appellant drew sustenance from the statement of PW5 – Dev Raj, Draftsman, in the context of the existence of pegs at the spot. It may be indicated here that, as per the statement made by PW5 – Dev Raj in the course of cross examination, “the pegs are situated near the mangers in the said compound of Jora Singh's house.” The plea advocated on the basis thereof is that it was Sukhpal Kaur only who had thrown her husband Jora Singh on a peg and he died on account of the injury received thereby.

The plea is just required to be noticed to be discarded. If there was even an iota of truth in the relevant averment, there is no reason why it would not have been put to Sukhpal Kaur in the course of cross-examination. We may notice here that all that was put to Sukhpal Kaur in the course of cross-examination (and denied by her) was that she had picked up a quarrel with her husband Jora Singh at the relevant point of time and that it was in the course of that quarrel that she gave her husband a push resulting into his fall and that it was on account of that fall only that he sustained injuries. It was nowhere put to her that she had thrown Jora Singh on a peg. Further, it was nowhere ascertained from PW1 – Dr. Tarloki Nath whether the deceased could have sustained the injuries (found on the dead body) by a fall. The question put to him in the course of cross-examination was whether injury No.1 found on the dead body of Jora Singh could have been sustained by a fall on a sharp edged point peg. He responded in affirmative. However, no question was put to PW1 - Dr. Tarloki Nath about the other injuries found on the dead body. Even otherwise, the statement made by PW1 – Dr. Tarloki Nath qua injury No.1 cannot, by any manner of interpretation, be said to be sufficient to over-rule the substantive evidence in the statements of PW2 – Sukhpal Kaur and PW3 – Amandeep Kaur to the effect that they had witnessed the appellant – Baldev Singh give the ghope blow on the chest of Jora Singh.

The present is, thus, a case in which the prosecution has been able to prove that there was motive on the part of appellant – Baldev Singh to commit the crime for which he stands convicted. There is also substantive evidence attributing a precise role to him in the causing of death of Jora Singh. There is no acceptable evidence that there was any inordinate and/or unexplained delay in the lodging of the First Information Report with the police. The medical evidence is supportive of the ocular segment. By the very nature of things, PW2 – Sukhpal Kaur and PW3 –

Amandeep Kaur would be most interested in ensuring that the real perpetrator of the crime is punished for the murder of their bread earner.

We, thus, find no reasons to interfere in the finding recorded by the learned Trial Court qua the indictment of appellant – Baldev Singh. The appeal filed by Baldev Singh shall stand dismissed. However, for the reasons noticed in an earlier part of this judgment, the appeal filed by appellant – Kulwant Kaur shall stand allowed and she shall stand acquitted of the charge.

**(S.D. Anand)
Judge**

March 24, 2008
vkd

**(Adarsh Kumar Goel)
Judge**

Note : Whether to be referred to Reporter : Yes/No